

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

WESLEY LYNN RUIZ,	§	
Petitioner,	§	
	§	
v.	§	CIV. ACT. NO.3:12-CV-05112-N
	§	ECF
LORIE DAVIS,	§	U.S. District Judge David Godbey
Director,	§	
Texas Department of Criminal Justice,	§	
Institutional Division,	§	
Respondent.	§	
	§	

**MOTION FOR APPOINTMENT OF COUNSEL**

Wesley Lynn Ruiz was convicted and sentenced to death in July 2008, for the murder of a Dallas Police Officer, Corporal Mark Nix. 2 CR 545; 663-64; 55 Reporter's Record (RR) 64. His conviction and sentence was affirmed on both direct appeal, *Ruiz v. State*, No. AP-75,968, 2011 WL 1168414 (Tex. Crim. App. March 2, 2011), cert. denied, *Ruiz v. Texas*, 565 U.S. 946 (2011), and state habeas review, *Ex parte Ruiz*, No. WR-78,129-01, WR-78,129-02, 2012 WL 4450820 (Tex. Crim. App. Sept. 26, 2012), cert. denied, *Ruiz v. Texas*, 569 U.S. 906 (2013). He challenged his conviction in this federal district court pursuant to 28 U.S.C. § 2254, by filing a federal petition for writ of habeas corpus. Docket Entry (DE) 14.<sup>1</sup> On December 14, 2018, this Court denied his petition and

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<sup>1</sup> This Court granted Ruiz's unopposed motion to stay and abate federal habeas proceedings so that he could return to the state court to exhaust claims regarding the

denied a certificate of appealability (COA). DE 36 (Memorandum Opinion and Order Denying Relief); DE 37 (Final Judgment). On July 8, 2020, the Fifth Circuit also denied COA. *See Ruiz v. Davis*, No. 19-70003; DE 39, 40.

While his motion for COA was pending in the Fifth Circuit, Ruiz's appointed counsel, Stephen Bush, filed a motion seeking to withdraw due to his retirement from the practice of law, and asked that new counsel be appointed. *See* DE 40, at 13. The Fifth Circuit granted his motion to withdraw but the motion for appointment of counsel was "carried with the case." *Id.* The court then issued the mandate and listed the case as closed.<sup>2</sup>

Because of the impending 90-day deadline for the filing of a petition for writ of certiorari in the Supreme Court, and the possibility that an execution date could be set at any time, in the interest of justice, the Director asks this Court to appoint federal habeas counsel on Ruiz's behalf.

## CONCLUSION

For the foregoing reasons, the Director moves this Court to grant her motion and appoint federal habeas counsel for Ruiz.

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testimony of A.P. Merillat. DE 15, 16. However, the CCA dismissed his application as an abuse of the writ pursuant to Texas Code of Criminal Procedure article 11.071, § 5(a), without considering the merits of the claims. *Ex parte Ruiz*, No. WR-78,129-03, 2014 WL 6462553 (Tex. Crim. App. Nov. 19, 2014).

<sup>2</sup> The appellate court has since recalled the mandate for unspecified reasons. *See* DE 41.

Respectfully submitted,

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Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

MARK PENLEY  
Deputy Attorney General  
for Criminal Justice

EDWARD L. MARSHALL  
Chief, Criminal Appeals Division

s/ Tomee M. Heining

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\*TOMEE M. HEINING

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### **CERTIFICATE OF CONFERENCE**

I do hereby certify that a conference is not possible because Petitioner is incarcerated and is presently unrepresented by counsel. The Director will not speculate on whether the Petitioner will oppose this motion.

s/ Tomee M. Heining

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TOMEE M. HEINING  
Criminal Appeals Division

### **CERTIFICATE OF SERVICE**

I hereby certify that on July 14, 2020, a true and correct copy of the above and foregoing pleading was served by placing same in the United States mail, postage prepaid, and addressed to:

Wesley Lynn Ruiz  
TDCJ-CID Number 999536  
TDCJ Allen B. Polunsky Unit  
3872 Farm to Market Road 350 South  
Livingston, Texas 77351

s/ Tomee M. Heining

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TOMEE M. HEINING  
Criminal Appeals Division